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United Mine Workers of America
Testimony before the
Senate Committee on Health, Education, Labor and Pensions**

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Thank you for allowing me this opportunity to appear before your Committee. As President of the United Mine Workers of America (“UMWA”), I represent the union that, for 116 years, has been an unwavering advocate for miners’ health and safety.

Miners’ health and safety has been in the headlines for much of 2006, but we all know that is because far too many coal miners have perished. Nearly as many miners died in the first six weeks of 2006 as perished in all of 2005. In the 12 month period from February 16, 2005 to February 17, 2006, 43 coal miners died in coal mining accidents.

With me today are people the UMWA invited to attend this hearing: active coal miners from the coal-mining states of Alabama, West Virginia, Kentucky, Pennsylvania, Ohio, Illinois, and Virginia, as well as UMWA members who belong to the mine rescue teams that participated in the rescue efforts at the Sago and Alma mines. They join me in urging Congress to ensure that MSHA aggressively protects miners’ health and safety, so that they can do their jobs safely and come home to their families each and every day. **I am also accompanied by widows, a fiancée, brothers and sisters, and children of brave miners killed in recent mining tragedies in West Virginia and Alabama.** They want to ensure that their loved ones did not die in vain, so the sadness and loss they are experiencing will not confront other mining families.

We are here today to discuss and review the performance of the Mine Safety and Health Administration (“MSHA”). First let me say that MSHA is made up of many dedicated civil servants: health and safety professionals whose efforts we deeply appreciate. However, MSHA’s top policy-makers have not been doing their job protecting and enhancing miners’ health and safety. This may be because

so many of them were mine management executives before coming to MSHA; at MSHA they spend too much time trying to appease their friends, and too little time looking out for miners' interests.

Specifically, MSHA has failed in heeding Congress' express purpose when it enacted the Mine Act and explicitly directed the Secretary of Labor **"...to develop and promulgate improved mandatory health or safety standards to protect the health and safety of the Nation's coal or other miners."** 30 U.S.C. §801(g)(1). For those of us dealing with miners' health and safety on a daily basis, it is apparent that MSHA has neglected this essential purpose of Congress. The entire country has now witnessed the terrible price so many families have paid for MSHA's inaction and misdirected efforts. It is MSHA's inaction and chronically misdirected efforts that are the focus of my remarks today.

It is also important for you to know that coal mining is at record levels in terms of production, with far fewer miners needed to extract the mineral. However, as new mining methods that enhance productivity were being developed, MSHA has not met its challenge: not only has MSHA circumvented some of the most basic health and safety guidelines that are spelled out in the Mine Act, but the Agency has not promulgated rules to keep pace with record productivity and the new mining techniques.

I will first review how current mine safety laws came into being; and then describe a number of ways in which MSHA has failed to protect miners' health and safety: it is not developing enough new mandatory standards to protect miners' health and safety, and through "policy" it is allowing operators to pursue practices that compromise – rather than enhance – miners' health and safety. We hope that in exercising your oversight responsibilities, this Committee can help redirect MSHA so it will engage in the principal activities Congress mandated when it crafted the Mine Act.

Dangers of Mining

It was shortly after 78 deaths at Farmington, West Virginia in 1968 that Congress enacted the Coal Act in 1969; the legislation was then expanded to other mining industries and re-named the Mine Act in 1977. From its inception, Congress appreciated that the enforcement agency must be independent of the operators it regulates: at first Congress assigned the task to the Bureau of Mines,

and then it was moved to a newly-created Mine Safety and Health Administration within the Department of Labor.

Since the Coal Act was passed, fatalities in coal mining have decreased dramatically: while over 300 miners died in 1968, the year before the Coal Act was enacted, fewer than 100 miners have perished in any single year over the last 20 years. Yet, mining still remains the second-most dangerous industry in this country.

Aside from the very dramatic accidents that captured the nation's attention in January 2006, thousands of miners remain disabled and dying from black lung disease, while many other miners die in mining accidents every year. Most typically accidents claim the lives of one or two miners at a time, from roof falls, equipment failures, electrical problems, and other accidents. In just the first six weeks of 2006, *in addition to* the 12 miners who perished at the Sago mine and the two who died in the January 19 mine fire at Massey's Aracoma Alma No. 1 mine, *seven* other coal miners also died, one at a time.

There are also countless near-misses that occur on a regular basis. Since August 2000, MSHA records show there were well over 400 mine fires, ignitions, explosions and inundations that far too-easily could have developed into significant disasters and fatalities. Many other incidents likely went unreported.

Mine Act Purposes

In passing the Mine Act, Congress set forth four purposes. The first was to establish a long list of very specific "interim mandatory health and safety standards," as well as to direct the Secretary of Labor "to develop and promulgate improved mandatory health or safety standards to protect the health and safety of miners." The other purposes Congress established were a) for the Secretary to require operators to comply with such standards; b) for MSHA to cooperate with and assist states with their own mine health and safety programs; and c) to improve and expand "research and development and programs aimed at preventing coal or other mine accidents and occupationally caused diseases in the industry." 30 U.S.C. §801(g). As we will show, MSHA has neglected the priorities Congress established; this neglect has been chronic.

Where Mine Act Protections Are Found (and Evaded)

Mine safety protections may be found in the Act itself, in regulations MSHA has promulgated, through modifications MSHA may permit on a case-by-case basis, and through MSHA's policies. The issue of "belt air"¹ provides an example of both how health and safety protections come into play, and how MSHA has allowed these protections to be evaded.

First, there is the Mine Act itself. In writing the Coal Act and the Mine Act, Congress incorporated a long list of very specific mandatory standards. For example, at 30 USC §863(y), Congress mandated that, for any mines developed after December 31, 1969, air that passes through belt entries "shall not be used to ventilate active working places."

Congress also gave MSHA the authority to "develop, promulgate and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines," consistent with rulemaking procedures set forth in the Administrative Procedures Act. 30 USC §811(a). And although the UMWA vigorously opposed the rule, it was pursuant to its authority to promulgate "improved health or safety standards" that MSHA issued a new belt air rule in April, 2004. 69 Fed. Reg. 17480. MSHA's belt air rule superceded the prohibition Congress had written into law.

Petitions for Modification constitute a third avenue for establishing the

¹To ventilate sections of the mine where miners work requires the operator to course fresh air into the mine. Under the Mine Act, Congress specified that intake and return airways were to be separated from the belts that transport coal out of a mine. 30 USC §863(y).

"Belt air" refers to air that is directed *into* the underground coal mine, and which passes through the same tunnels in which conveyor belts transport coal *out* of the mine. The tunnels, known as "entries," are costly and time consuming to develop, so if an operator is allowed to use belt air it can avoid building a separate entry for the fresh air. When belt air is used to ventilate the active working sections, large exhaust fans pull fresh air from outside the mine into and along the conveyor belt, and the air passes over and around the freshly-cut coal on the belt before the air can ventilate the inner areas of the mine where miners work. However, the belt entry has historically been the dirtiest and most fire-prone entry in the mine, and using belt air introduces a number of safety and health concerns, including a) exposing miners to excessive coal dust on an on-going basis, and b) enhancing hazards when fire breaks out along the conveyor belts, including carrying flames and deadly gases directly to the miners' work areas and to vital evacuation routes - dangers exacerbated by both the high velocity of the air fanned through the underground tunnels, and by the immediate availability of a fuel source, fresh coal.

health and safety standards applicable at a mine. In particular, in Section 101(c) of the Mine Act, Congress authorized the Secretary to “modify the application of and mandatory safety standard” if she would determine “that an alternative method of achieving the [same] result...exists which will at all times guarantee no less than the same measure of protection afforded the miners..., or that the application of such standard...will result in a diminution of safety to the miners...” 30 USC §811(c). Typically, petitions for modification are filed by operators when they wish to avoid some mandatory standard safety. To obtain an exemption, the operator submits its proposed alternative, with an explanation about how its proposal is intended to provide miners’ with comparable protection.

Over a period of many years, MSHA allowed a large number of operators to use belt air *despite the Mine Act prohibition against it* by use of the petitions for modifications procedure. We believe MSHA approved petitions for modification to allow belt air (albeit conditioned on the installation of equipment intended to monitor the mine atmosphere), because doing so enabled operators to develop fewer entries and thereby increase their production. In fact, when MSHA proposed its belt air rule in 2003, the Agency noted that it had already approved about 90 petitions allowing operators the right to use belt air! 68 Fed. Reg. 3937. For those operations that had such modifications in effect, MSHA had already effectively superceded the prohibition of belt air that Congress had written; when MSHA’s final belt air rule took effect, it eliminated that protection for all other mines, too.

The final basis for determining what standards apply comes from MSHA “policies.” MSHA maintains a Program Policy Manual in which the Agency explains how it interprets and applies various aspects of the Mine Act and regulations. Using the belt air example, before the belt air rule was finalized in 2004, the Policy Manual explained what exceptions a district manager could approve (for mines opened on or before March 30, 1970), and directed operators of later-opened mines to submit a request under the petition for modification procedures.

The Problem of Too Few Rules, and the Wrong Ones

Since the Mine Act was enacted, MSHA has promulgated relatively few rules. Compounding the problem of little rulemaking is that some – like the belt air rule that was finalized in April, 2004 – not only removed specific protections

Congress had required, but they have been directed at increasing productivity instead of improving miners' health and safety. Yet, Congress never authorized MSHA to spend taxpayer money to improve productivity. In promulgating regulations, MSHA is only supposed to issue "improved...standards to protect the health and safety of miners." When it proposed the belt air rule in January 2003, MSHA did *not* even *claim* it would *improve* miners' safety. On that issue MSHA simply stated that the new rule would "*maintain* the level of safety in underground mines while implementing advances in mining technology." Considering how much time and effort is consumed in most rulemaking efforts,² to promulgate a rule that does not *advance* miners' health and safety constitutes misdirected, wasted, energy.

There are too many compelling issues that remain unregulated, and which jeopardize miners' safety every day, for MSHA to pursue rules that do not materially contribute to miners' health and safety. As the recent tragedies at the Sago and Alma No. 1 coal mines demonstrate, there is a serious void in the regulatory framework for underground miners confronting a mine emergency. While there is a lot yet to be determined about these accidents, **the note that Sago miner George Junior Hamner wrote to his wife and daughter (copy attached) reveals that most miners survived the initial explosion at the Sago Mine.** It also demonstrates that those miners had no information about where to find fresh air or about how they might have been able to exit the mine. In fact, miners survived for many hours, but in the end they had inadequate access to oxygen to survive the toxic mine atmosphere.

Though Congress specifically suggested that the Secretary consider promulgating a rule requiring rescue chambers for miners to find shelter in an emergency, we are unaware of any substantial efforts MSHA has made to pursue

²When MSHA proposed its ventilation rule in January, 1988, the Agency included a provision that would have allowed the use of belt air so long as carbon monoxide sensors would be installed in the belt entry. Because this particular aspect of MSHA's proposed ventilation rule was met with "widely divergent views," 68 Fed. Reg. 3937, MSHA withdrew the belt air language from the ventilation rule that it finalized in 1992. *Id.* Nevertheless, MSHA decided to continue studying belt air as an independent matter to determine "the conditions under which air in the belt entry could be safely used in the face areas of underground coal mines." *Id.* In pursuing this effort, MSHA did not suggest that allowing belt air would *improve* miners' health and safety.

this option since the Act was written. Nevertheless, earlier this year just such a chamber was successfully used by, and saved the lives of, miners at a potash mine in Western Canada when they confronted a mine emergency. If they could rely on a rescue chamber to survive, why weren't the miners at Sago and Alma afforded that same opportunity?

At the Alma mine, miners were killed after a mine fire erupted on the belt that was used to ventilate the mine. If belt air had not been permitted, and if the belts were not flammable, or if the miners had more oxygen, or if they had lifelines to guide them out of the smoke-filled mine, perhaps we would have had a different outcome. **Delorice Bragg, the widow of Don Bragg who was killed at the Alma mine fire in January, is here with me today to ask why unsafe practices were allowed to continue, and why well-known emergency safeguards were not afforded to her husband.**

These deficiencies in miners' health and safety are all ones MSHA has known about for many, many years. Most of them have been known since the Coal Act was passed in 1968, over 37 years ago. In fact, in 1968 rescuers could not locate all the miners killed in the Farmington disaster and 19 remain entombed in that mine. After the Pyro mine exploded, killing 10 miners in 1989, many of these same needs were identified. The problems of no communications, the inability to locate underground miners, and insufficient self-rescuers were all noted as problems that confronted miners, including the 13 who were killed at the Jim Walters No. 5 mine on September 23, 2001. The need for these improvements has been talked about after too many tragedies. Long ago, it was time to stop talking and time to take action to implement changes that would help miners survive emergencies. We do not have to wait for 100% guarantees; we need to enhance a miner's chance of escaping an emergency, or surviving if trapped.

It is interesting that those advocating the status quo will say that some of the protections we seek, like supplemental oxygen, and better communications, are not worth pursuing because they may be damaged in the event of an explosion or other emergency. However, if the miners survive that initial event, it is likely they will be able to escape or survive *if* they are provided additional resources. At the Sago Mine, miners survived for many hours and may well have been able to escape if they had been directed out; or they might have survived if they had supplemental oxygen stored nearby. At the Jim Walters mine, those killed had inadequate information largely because the primary method of communication was

interrupted; if secondary communications (i.e., supplemental wireless devices) had been available, it is possible more would have survived.

Active miners and family members of those killed at the Jim Walters mine testified about the need for better communications, the need to be able to locate miners underground, and the need for more oxygen supplies stored underground at hearings MSHA conducted in February, 2003. Two of the miners who testified at MSHA's hearing in Lexington KY are with me today, **James Blankenship and Dwight Cagle, both from Alabama.** Transcripts from those hearings are available through MSHA's web page. What has resulted from those suggestions of three years ago? Nothing. Sadly, it came as no surprise to those of us interested in miners' health and safety when these very same problems and deficiencies developed at the Sago and Alma No. 1 mines; MSHA had not advanced any such protections in the intervening years.

In fact, MSHA has been going *backwards* in providing some of these protections. Assistant Secretary for MSHA David Lauriski scrapped 17 proposed rules on topics MSHA had identified as needing attention. A list of those withdrawn rules is attached. Among them were some of the protections that might have helped the miners who perished at Sago and Alma. Offering no explanation for its decision, on September 24, 2001 MSHA withdrew a rule that would have imposed new procedures and requirements for flame-resistant conveyor belts, even though the rule was then close to completion. On that same day, citing "resource constraints and changing safety and health regulatory priorities," MSHA withdrew its "pre-rule" concerning self-rescuers that had been among the Agency's rulemaking agenda since 1999.³ These rules were actually withdrawn the first day

³Throughout the industry there have been problems with miners not being able to properly don the self-rescuer units in emergency situations. Moreover, without a rule addressing self-rescuers, technological advances of these breathing devices has been stymied. In the legislative history of the Mine Act, Congress indicated that mining regulations should be technology-driving, to maximize miners' protections. We had hoped that with the promulgation of a new rule addressing self-rescuers, the existing problems would be addressed, and technological advances encouraged. The UMWA is convinced that such a rule would have been the catalyst for a new generation of self-rescuer devices. While operators are willing to invest in new technology when it increases production, it appears that they are not so willing to invest when in miners' health and safety.

We note that reports of the recent coal mine disaster in Mexico indicated that miners had access to at least six hours of oxygen, and there were additional units available underground. If

after the Jim Walters' No. 5 accident killed thirteen miners.

One year later, MSHA withdrew a pre-rule that would have addressed problems related to diminishing mine rescue capabilities.⁴ In the room with me this morning are a number of brave UMWA members who participated in the Sago and Alma rescue efforts. I want to publically thank them for their dedication and unselfishness in answering such emergency calls. Not once did these UMWA members hesitate when they were called in January, even though the miners at risk at Sago and Alma were not at union operations. These UMWA rescue team members are here today to let you know that they are concerned about the state of the mine rescue system, about the need for rules to compel the expansion of mine rescue capabilities, and the importance of having teams at each and every mine regardless of the mine size or location.

so, their oxygen resources far exceeded what must be provided to miners in this country.

⁴It took from three to five hours for the first rescue teams to arrive at Sago. That mine does not have its own rescue teams, even though MSHA regulations require mines to “establish at least two mine rescue teams which are available at all times when miners are underground, or...[make an arrangement] for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.” 30 CFR §49.2. (The regulation includes an exception for small and remote mines, but does not apply to the Sago mine.) That same regulation specifies that teams “shall be considered available where teams are capable presenting themselves at the mine site(s) within a reasonable time after notification...” *Id.* Given that it took three to five hours for the first mine rescue teams to arrive at Sago, it is apparent that the current system is not acceptable.

The UMWA submits that every underground coal mine should have mine rescue capabilities on site. These team members should be employees at the facility who would be acutely familiar with the mine. These individuals would not only be best able to carry out many of the duties required in these situations, but would also be uniquely qualified to brief additional offsite teams that may be necessary to complete the rescue. For even small and remote mines, MSHA should require mine rescue teams to be ready when disasters strike. No trapped miners should ever again have to wait three to five hours for rescue efforts to begin.

Instead of promulgating a rule that would improve rescue teams' availability and capabilities, MSHA eliminated further work on rescue teams regulations. Meanwhile, it permits operators to expand on the ill-advised practice of contracting out such work. Withdrawing the proposed rule effectively eliminated any meaningful improvement in comprehensive mine rescue activity, but it also afforded some mine operators the opportunity to disband teams so they could increase their profits.

A number of other rules at various stages of rulemaking were also withdrawn under the current administration. Some of the most compelling concern air quality, miners' exposure to airborne contaminants, and coal dust. The existing regulations utilize the same exposure limits that were in place when the Mine Act was promulgated in 1977, and they are widely-recognized (by MSHA and others) as being outdated and offering inadequate protection to miners' health. Recognizing that the permissible exposure limits ("PEL"s) allowed under existing regulations expose miners to unsafe levels of contaminants in the underground environment, MSHA had planned to update them. However, it withdrew the proposed rule in September 2002.

Another proposed rule would have enacted recommendations emanating from the Secretary's 1996 Advisory Committee on the Elimination of Pneumoconiosis Among Coal Workers. This rule would have decreased the amount of respirable coal dust, in particular, to which coal miners could be exposed. Reducing the allowable respirable dust exposures would both diminish miners' likelihood of contracting black lung disease and it would also reduce the amount of explosive coal dust in the mine environment. This matter was in the pre-rule stage when it was withdrawn in September 2004. Unfortunately, the only efforts regarding coal dust that MSHA made under former Assistant-Secretary Lauriski was a proposal that would have allowed respirable dust levels to *increase by four fold*. That proposal was met by a public outcry, including opposition from the halls of Congress, and Mr. Lauriski ultimately withdrew it.

In September 2001, MSHA also withdrew a proposed rule that would have required the monitoring of respirable dust at all times. MSHA also stopped any plans to increase the required training and retraining of miners, even though the Agency identified this need back in 1998, and the UMWA has consistently asked for such increases out of a concern that current requirements are inadequate.

MSHA dropped rulemaking efforts the Agency began in January 2001 to establish uniform procedures for its accident investigations; the failure to have such procedures has frustrated the designated miners' representatives from participating in the investigatory interviews that took place in connection with the Sago investigation. As it stands, MSHA itself, though it could be implicated in the accident, conducts the entire investigation. MSHA investigations also permit the operator to remain, even though the operator may be culpable for the accident.

While the UMWA would normally be present for accident investigations that concern a unionized operation, at Sago which is non-union, the Union has been excluded from interviews, even though a number of active miners as well as several family members of those killed have asked the UMWA to serve as their representative. A number of family members of miners killed in the Sago Mine disaster are with me here today: **Amber Helms and Virginia Moore, the daughter and fiancé of Terry Helms, Peggy Joyce Cohen, the daughter of Fred Ware, Jr., Cheryl Ann Meredith, the daughter of Jim Bennett, and John Groves, the brother of Jerry Groves.** Some of these individuals specifically asked MSHA to give them access to the interviews, whether directly or through the UMWA as their designated representative. Though Richard Gates (the chief MSHA investigator for the Sago accident) promised them a response to their request before the interviews would begin again on February 14, he did not respond to the families by then, and there has been no subsequent change to the interviews' procedure; those interviews have been completed, or nearly so.

We believe MSHA withdrew these and other proposed rulemaking efforts because implementing them would have cost operators substantial capital - resources dedicated to miners' health and safety, instead of production.

Important, Albeit Belated, MSHA Activity

It is not for lack of knowledge that MSHA has failed to enact these needed protections. MSHA knows how to do better. The Agency itself has performed countless internal reviews and self-analyses; the federal government's watchdog agency, the GAO, has given it direction, and the UMWA has communicated both formally and informally about how MSHA can and must do better.

Indeed, on the heels of so many coal mining disasters commanding considerable national attention, MSHA recently began to initiate some potentially useful rulemaking that could improve a trapped miner's ability to survive a mine accident. Look to its press releases and you can see that by various notices the Agency issued in February, 2006, MSHA has indicated 1) it will aggressively assess and test communication and locating devices for underground mines, 2) it will pursue a new mine evacuation rule and will do so in an expedited, emergency fashion, 3) it will co-sponsor an international mine safety symposium that will focus on new technologies and practices, and 4) it participated in a symposium on wireless technology. We support such efforts. We are cautiously optimistic that

MSHA will quickly promulgate and implement an emergency rule that would require additional caches of self-rescuers and training on how miners transfer from one such unit to another, lifelines that could help miners evacuate, and clarification that an operator would need to notify MSHA of an emergency within 15 minutes. We are also pleased to see that MSHA is now studying various emergency communications and tracking systems. It has invited manufacturers to submit information about devices that could function in gassy areas of underground mines.

But we must ask, why did MSHA wait this long to pursue these issues? Why wasn't it looking for these solutions ten and twenty (or more) years ago? Why was it expending precious resources hunting for ways that allow operators to use hazardous belt air to ventilate miners' working sections instead of protecting trapped miners? For an agency with such a clear mandate as that which Congress wrote into the Mine Act – to protect and improve miners' health and safety, we ask you to consider how MSHA could have gotten so terribly misdirected.

Need for More Aggressive and Consistent Enforcement

MSHA has been neither aggressive nor consistent in enforcing the regulations that already exist. The Agency spends too much effort at “compliance assistance,” and too little on enforcement.

After the Pyro disaster in 1989, MSHA performed an internal review, and identified a host of Agency performance problems and deficiencies. More recently, the Agency performed an Internal Review of MSHA's actions during the period before the Jim Walters' mine explosions to “improve our inspection process to better protect our nation's miners.” The review again compared what MSHA actually did with what the Mine Act requires it to do. A number of problems were identified as deficiencies “at both the district and headquarters level,” deficiencies “relevant to inspection procedures, level of enforcement, plan reviews, the [Alternative Case Resolution Initiative] and accountability programs, supervision and management, and headquarters oversight.” The Government Accountability Office (“GAO”) also reviewed MSHA's performance after the Jim Walters' accident and noted in its report, issued in September 2003, that MSHA headquarters was not performing adequately in several key areas. Specifically, the GAO found MSHA failed to ensure violations cited to mine operators were corrected in a timely fashion. In fact, GAO found that of all the citations issued by the Agency, including those written as “significant and substantial,” despite

inspector-imposed deadlines by which problems were to be abated, 48% of the time the Agency failed to follow-up in a timely fashion to see if the operator fixed the hazards.

Unfortunately the Agency's top managers have done little to move any of the necessary improvements from recommendation to reality. We hope that by having Congress add its voice now, along with the public's demand for its better performance on the heels of Sago, Alma, and the other tragic accidents, MSHA will finally refocus its attention.

In addition to the subjects that are already underway for emergency rulemaking (more self-rescuers and training on transferring units, lifelines to help miners evacuate the mine, and the need to notify MSHA of an emergency within 15 minutes), and subjects that MSHA is also actively studying (emergency communications and tracking systems) – all of which are long over-due for regulation – we urge MSHA to promulgate and implement rules that would materially contribute to miners' health and safety. Without intending to be comprehensive, the issues that we identify as constituting the top priorities for MSHA rulemaking include: reducing miners' exposure to respirable (coal) dust, updating permissible exposure limits for contaminants in the mine environment; undoing the unwise belt air rule, and requiring non-flammable belts, improved atmospheric monitoring systems, expanding the mine rescue team requirements and support, improving requirements for firefighting and evacuation plans, developing a nationwide emergency communications' system for mines, increasing training and retraining for miners, revising MSHA's approval and certification system for mining equipment, requiring secondary telephone lines in a separate entry, providing miners with a safer means of escape in the event of a mine fire, explosion, or inundation, updating and increasing fines for Mine Act violations, and developing uniform accident investigation procedures. MSHA should also determine whether the seals it tolerates are adequate (note that MSHA-approved seals failed at Alma although 30 USC §303(z) of the Mine Act requires explosion-proof seals, and 30 CFR §75.334 and .335 provides that seals withstand 20 psi); the Agency also should study emergency safety chambers, as suggested in the Mine Act, at 30 USC §315.

MSHA needs a larger budget for coal enforcement. Aside from its budget not keeping apace with inflation, instead of focusing on enforcement in recent years MSHA has redirected some of its inspectors' time towards "compliance

assistance.” MSHA also needs to bolster its expertise, and prepare for the transition as many of its inspectors approach retirement.

MSHA also has been remiss in seeking and enforcing meaningful fines and penalties for Mine Act violations. In February 2006 MSHA issued a press release to say announce that it will seek to “modernize” the fine structure which has not been revisited in nearly 25 years, and “needs updating to strengthen incentives for compliance.” The Agency also needs to do a better job collecting the penalties it imposes. One fundamental problem is that MSHA compromises penalties far too often; whether at conferences held with the operator at MSHA’s district offices or through negotiated settlements, MSHA collects very little in the way of the fines it assesses. This means that operators have little incentive to pay. There has developed a culture whereby operators view MSHA fines as little more than a nuisance, a minor cost of doing business. MSHA can and must do better to ensure that its fines coerce compliance with the Mine Act - that is what is most needed.

Just last month, in February, 2006, MSHA initiated two injunctive actions against operators with large unpaid fines. This was the first time the Agency attempted such remedies. While we support these efforts, we also must ask, why has it taken this long for MSHA to put teeth into the enforcement side?

Conclusion

Coal remains a vital part of our nation’s economy and a primary component of our energy needs. Coal mining is again growing. More and more young people are entering the industry. It is still dangerous. But we can do a lot more than we are doing today to make it safer. Miners should not have to get sick, or to risk their lives just by going to work.

I urge you to require MSHA to do in 2006 all that Congress demanded in 1969 and again in 1977. Regulations that were in the pipeline in 2001 and 2002 should be reactivated and finalized in a timely fashion. New regulations to protect miners – both while on the job and when emergencies strike – must be promulgated. All such regulations must be enforced regularly and aggressively. MSHA must make these much-needed, and over-due improvements.

The status quo is inadequate. The government failed the Sago and Alma miners, and when it failed them it failed *all* miners. In enacting the Mine Act,

Congress plainly stated: “Congress declares that (a) the first priority of all in the coal or other mining industry must be the health and safety of its most precious resource – the miner.” (30 U.S.C. §801.) We take that admonition seriously; everyone else associated with the mining industry must re-establish miners’ health and safety as their top priority, too. Senseless deaths and injuries must stop.

I thank you for your interest in miners’ safety and would be happy to answer your questions.